

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:15CR108
(Judge Keeley)

ANTONIO COTTINGHAM,

Defendant.

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
AMENDED REPORT AND RECOMMENDATION CONCERNING BINDING PLEA OF
GUILTY IN FELONY CASE (DKT. NO. 45)
AND SCHEDULING SENTENCING HEARING

On January 28, 2016, the defendant, Antonio Cottingham ("Cottingham"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a binding plea of GUILTY to Count One of the Indictment. After Cottingham stated that he understood that the magistrate judge is not a United States District Judge, he consented to tendering his plea before the magistrate judge. Previously, this Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Cottingham's statements during the plea hearing and the testimony of Special Agent Kenneth Peck, of the Bureau Alcohol, Tobacco, Firearms, and Explosives, the magistrate judge found that

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Cottingham was competent to enter a plea, that the plea was freely and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On January 28, 2016, the magistrate judge entered a Report and Recommendation Concerning Binding Plea of Guilty in Felony Case (dkt. no. 44). The magistrate judge subsequently entered an Amended Report and Recommendation Concerning Binding Plea of Guilty in Felony Case ("R&R"), finding a factual basis for the plea and recommending that this Court accept Cottingham's binding plea of guilty to Count One of the Indictment (dkt. no. 45).

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. The parties did not file any objections to the R&R.

Accordingly, this Court declines to adopt, as moot, the magistrate judge's R&R (dkt. no. 44) and **ADOPTS** the magistrate judge's amended R&R (dkt. no. 45), **ACCEPTS** Cottingham's guilty

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plea, and **ADJUGES** him **GUILTY** of the crime charged in Count One of the Indictment.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

1. The Probation Officer shall undertake a presentence investigation of Cottingham and prepare a presentence report for the Court;

2. The Government and Cottingham are to provide their versions of the offense to the probation officer by **February 26, 2016;**

3. The presentence report is to be disclosed to Cottingham, defense counsel, and the United States on or before **April 12, 2016;** however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **April 26, 2016;**

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5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **May 10, 2016**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **May 24, 2016**.

The Court will conduct the sentencing hearing for the defendant on **Friday, June 10, 2016 at 10:00 A.M.** at the **Clarksburg, West Virginia** point of holding court.

The magistrate judge remanded Cottingham to the custody of the United States Marshal Service.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: February 12, 2016

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE